

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Posted 12/8/04
U.S. DISTRICT COURT
2004 DEC -7 AM 9:20
GREGORY C. HARGHAM
CLERK

Case No. 03-MK-0702 (MJW)

BY CC DEP. CLK

MARY LOUISE MILHAM,

Plaintiff,

v.

ROCK BOTTOM RESTAURANTS, INC., d/b/a Sing Sing, and
DENVER POLICE OFFICER DANNY PEREZ (Badge #95032), in his individual and official
capacity,

Defendants.

RENEWED MOTION TO FILE PLEADING UNDER SEAL

Defendant, **DANNY PEREZ** (hereinafter "Perez"), by and through his attorney, **SONJA S. MCKENZIE** of **SENDER GOLDFARB & RICE, L.L.C.**, and pursuant to Local Rule D.C.COLO.LCivR 7.2, hereby renews his Motion for an Order allowing the pleading at Docket no. 69 to be filed under seal.

IN SUPPORT of this Motion, Perez states as follows:

1. On March 5, 2004, the Court entered a Stipulation and Protective Order in this matter.

2. Under the Stipulation and Protective Order, certain information may be designated by the parties as Confidential. The pleading designated as Docket no. 69 contains confidential information, including sensitive information related to an internal affairs complaint initiated against Perez. Because the pleadings designated as docket no. 69 contains confidential

information pursuant to the Stipulation and Protective Order, this information must be filed under seal.

3. Perez designated the pleading designated as confidential docket no. 69 pursuant to Local Rule D.C.COLO.LCivR 7.2, which permits a judicial officer to seal court files upon a motion and “a showing of compelling reasons.” The information contained in the pleading designated docket no. 69 falls within a police officer’s expectation of privacy in certain records as recognized by the Colorado Supreme Court’s decision in *Martinelli v. District Court*, 199 Colo. 163, 612 P.2d 1083 (1980). The *Martinelli* case held that the police officers’ right to privacy in certain records, including personnel files and S.I.B. reports (report to the Denver Police Department’s Staff Investigation Bureau) was similar to the “right to confidentiality.” *Id.*, 199 Colo. at 173, 612 P.2d at 1091. *Martinelli* held that “when the right to confidentiality is invoked to prevent disclosure of personal materials or information, a tri-partite balancing inquiry must be undertaken by the court, as follows:

- (1) does the party seeking to come within the protection of the right to confidentiality have a legitimate expectation that the materials or information will not be disclosed;
- (2) is disclosure necessary nonetheless required to serve a compelling state interest; and
- (3) if so, will the necessary disclosure occur in a manner which is least intrusive with respect to the right of confidentiality?” *Id.*, 199 Colo. at 173, 612 P.2d at 1091.

The Tenth Circuit adopted the *Martinelli* test in *Denver Policemen’s Protective Ass’n v. Lichtenstein*, 660 F.2d 432 (1981). See also *Flanagan v. Munger*, 890 F.2d 1557, 1570 (1989).

4. The internal affairs record and related information that Perez seeks to file under seal is of a personal and sensitive nature. Perez never expected that this information would be disclosed in a public record. However, in order to file the Motion in Limine re: evidentiary issues, the sensitive information had to be disclosed. Perez asserts that the privacy interests in his sensitive internal affairs record satisfy the "compelling reasons" requirement pursuant to D.C.COLO.LCivR 7.2.

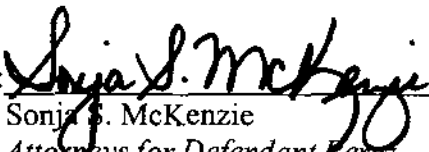
5. Pursuant to D.C.COLO.LCivR 7.1(A), counsel for Plaintiff and counsel for the co-Defendant Rock Bottom Restaurants, Inc. was contacted on November 12, 2004 to discuss the requested motion sealing of the designated as docket no. 69. Additionally, on November 29, 2004, undersigned counsel discussed the renewal of the Motion to File Combined Motions in Limine Under Seal. Neither attorney objects to the Motion to File Combined Motions in Limine Under Seal, nor the renewal of that Motion.

WHEREFORE, Perez requests that the Court enter the following orders:

- A. An Order granting the Motion to File Combined Motions in Limine Under Seal;
and
- B. Order that the clerk accept the Combined Motions in Limine for filing under seal.

Respectfully submitted,

SENTER GOLDFARB & RICE, L.L.C.

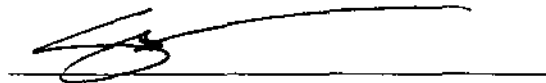
By: 
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 16th day of December, 2004, a true and correct copy of the above and foregoing **DEFENDANT DANNY PEREZ'S COMBINED MOTIONS IN LIMINE (CONFIDENTIAL - FILED UNDER SEAL)** was placed in the U.S. Mail, First Class postage pre-paid, addressed to:

David A. Lane, Esq.
Killmer & Lane, L.L.P.
1543 Champa Street, Suite 400
Denver, Colorado 80202

Thomas E. Hames, Esq.
Overturf & McGath, P.C.
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A handwritten signature in black ink, appearing to be "T. Hames", is written over a horizontal line.